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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,336	10/21/2003	Mark Beutler	BEUTLER, MARK #5	2195
40992	7590	07/07/2005	EXAMINER	
THOMAS R. LAMPE 1390 WILLOW PASS ROAD SUITE 1020 CONCORD, CA 94520			MAI, TRI M	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 07/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/690,336

Applicant(s)

BEUTLER, MARK

Examiner

Tri M. Mai

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 7-10, 12, 15, 22-25, 27 and 30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 11, 13, 14, 16-21, 26, 28 and 29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>10/21/03</u> .  | 6) <input type="checkbox"/> Other: ____                                     |

### DETAILED ACTION

1. Claims 7-10, 12, 15, 22-25, 27, and 30 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention as previously set forth. Applicant elected without traverse.

2. Claim 16-21, 26, 28, and 29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are directed to a blank. However, there are several recitations that defining a container, e.g. top, bottom. It is unclear what is the claimed subject matter.

3. Claims 1-6, 11, 16-21, and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Chadwick, II (4492723). Chadwick, II teaches a blank having four corners, with first fold line and second fold line about Li, defining a side panel and defining a bottom panel as claimed.

It is noted that Chadwick teaches the gluing of various parts together for closing the container in Fig. 36.

4. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chadwick, II. To the degree it is argued that there is no teaching the step of sealing the top panels, It would have been obvious to one of ordinary skill in the art to attach the top panels T at portions Le to keep the container secured.

5. Claim 1-6, 11, 13, 14, 16-21, 26, and 28-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Beutler (D457028) or Beutler (442862). Beutler teaches a container with four curved sidewalls. With respect to the method as claimed. the container as shown would have been inherently erected by the steps as set forth. With respect to the blank as claimed, the

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container as shown by Beutler '028 would have been inherently erected by a blank as set forth in the claim.

Regarding claims 3 and 18, each of the curved portions in the two Beutler references has a straight small portion as claimed.

To the degree it is argued that Beutler does not teach the method as claimed, It would have been obvious to one of ordinary skill in the art to erect the container from a unitary blank in Beutler as taught by Kuhn et al. to provide a material for the construction of the container.

6. Claims 3 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beutler (D457028) or Beutler (442862).

To the degree it is argued that there is no straight portion in the curved portions. It would have been obvious to one of ordinary skill in the art to provide a straight portion over at least portions of the lengths to provide the desired shape for the sidewall of the container since matter relating to ornamentation only which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art. In re Seid, 161 F.2d 229, 73 USPQ 431 (CCPA 1947)

7. Claim 1, 3-4, 13, 14, 16, 18-19, 21, 26, and 28-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Kuhn et al. (5305951). Kuhn teaches the folding of a blank having four quadrant first and second fold lines (first line is comprised of 50, 50, and 55, the second fold line is portion 36) both lines are disposed opposite of an imaginary diagonal line (from respect end of lines 91).

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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (571)272-4541. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on (571)272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tri M. Mai  
Primary Examiner  
Art Unit 3727

